

BILL NO. S-75-08-17

SPECIAL ORDINANCE NO. S-153-75.

AN ORDINANCE approving a contract with JOHN
DEHNER, INC. for Resolution 5689-1975, Sherman
Boulevard Underpass Modification

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

SECTION 1. That the contract dated June 23, 1975, between the
City of Fort Wayne, by and through its Mayor and the Board of Public Works
and JOHN DEHNER, INC., for:

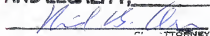
Construct the street and miscellaneous improvements as set
forth in the plans, specifications and special provisions of
the Sherman Boulevard Underpass Modifications Improvement
Resolution No. 5689-1975

for a total cost of \$397,665.99, all as more specifically set forth in said contract
which is on file in the Office of the Board of Public Works, and is by reference
incorporated herein, made a part hereof and is hereby in all things ratified,
confirmed and approved.

SECTION 2. This Ordinance shall be in full force and effect from
and after its passage and approval by the Mayor.


Councilman

APPROVED AS TO FORM
AND LEGALITY.


CITY ATTORNEY

Read the first time in full and on motion by Moses, seconded by Delmar, and duly adopted, read the second time by title and referred to the Committee on Public Works. (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: 8/12/75 Charles W. Tetterton
CITY CLERK

Read the third time in full and on motion by Moses, seconded by Hinga, and duly adopted, placed on its passage.
Passed (lost) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
TOTAL VOTES	<u>8</u>	<u>0</u>		<u>1</u>	
BURNS	✓				
HINGA	✓				
KRAUS	✓				
MOSES	✓				
NUCKOLS	✓				
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO				✓	

DATE: 8-26-75 Charles W. Tetterton
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) S-15375 on the 26th day of August, 1975.

ATTEST: (SEAL)

Charles W. Tetterton
CITY CLERK
James Stier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of August, 1975, at the hour of 2:00 o'clock A. M., E.S.T.

Charles W. Tetterton
CITY CLERK

Approved and signed by me this 27th day of August, 1975, at the hour of 2:00 o'clock A. M., E.S.T.

James Stier
MAYOR

Bill No. Bill No. S-75-08-17

REPORT OF THE COMMITTEE ON PUBLIC WORKS

We, your Committee on Public Works to whom was referred an Ordinance

approving a contract with JOHN DEHNER, INC. for Resolution 5689-1975,

Sherman Boulevard Underpass Modification

have had said Ordinance under consideration and beg leave to report back to the Common

Council that said Ordinance Do PASS.

Winfield C. Moses, Jr. - Chairman

Eugene Kraus, Jr. - Vice-Chairman

John Muckols

William T. Hinga

Donald J. Schmidt

W. C. Moses, Jr.

Eugene Kraus, Jr.

John Muckols

William T. Hinga

D. J. Schmidt

DATE 8-26-75 CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK



THE CITY OF FORT WAYNE
board of public works

June 23, 1975

The Common Council
Fort Wayne, Indiana

Gentlemen and Mrs. Schmidt:

The Board has awarded a contract to John Dehner, Inc. in the amount of \$397,665.99 for the Sherman Boulevard Underpass Modification. This award was made after the Public Service Commission of Indiana approved the improvement. Additional costs to the City shall be in accordance with figure stipulated by the PSCI at their hearing and will probably be something around \$25,000.00 This will cover required signalization.

The contractor is ready to begin construction upon notification.

Since construction must be coordinated with industrial companies located on the spur tract to assure contemplated deliveries, the Board is requesting "Prior Approval" to facilitate the immediate coordination and construction.

Very truly yours,

BOARD OF PUBLIC WORKS

nlj/
cc: Mayor
APPROVED:

Richard W. Moore William T. Krige James S. Steen
John A. Pelt Paul W. Brown Virvan J. Schmidt
Samuel J. Tolario Eugene Kraus

MEMBERS OF THE COMMON COUNCIL

ATTEST:

City Clerk

*Public Works
Dept.*

AN EQUAL OPPORTUNITY EMPLOYER

62-167-16 7/6/75 CONTRACT AND BOND

This Agreement, Made and entered into as of the TWENTY-THIRD day of

JUNE 19 75, by and between

JOHN DEHNER, INC.,

the County of Allen and State of Indiana, party of the first part, and the City of Fort Wayne, County of Allen, State of Indiana, by and through its Board of Public Works, party of the second part, under and by virtue of an Act of the General Assembly of the State of Indiana, entitled "An act concerning municipal corporations," approved March 6, 1905, and the provisions of all acts amendatory thereto and supplemental thereof.

WITNESSETH, That the party of the first part covenants and agrees to construct

The street and miscellaneous improvements as set forth in the plans,

specifications, and special provisions of the Sherman Boulevard

Underpass Modifications Improvement Resolution No. 5689-1975

for the Following Prices

6" Perforated Pipe for R.R. Crossing	Six dollars and Sixty cents	6.60
8" Perforated Clay Yard Drain	Seven dollars and Eighty cents	7.80
12" R.C.P. CL IV	Thirteen dollars and Forty One cents	13.41
12" R.C.P. CL V In Casing Complete	Twenty dollars and Sixty Eight cents	20.68
15" R.C.P. CL III	Eighteen dollars and One cent	18.01
18" R.C.P. CL V	Twenty Three dollars and Thirty Eight cents	23.38
33" R.C.P. CL III	Forty Four dollars and Seventy Six cents	44.76
33" R.C.P. CL V	Fifty Eight dollars and Fifty Seven cents	58.57
Manhole Type I	Five Hundred and Six dollars and Sixteen cents	506.16
Manhole Type II--60"	One Thousand Four hundred Thirty One dollars	1,431.00
Inlet Type I	Four Hundred and Twenty dollars	420.00
Special Backfill	Eight dollars and Fifty Two cents	8.52
#73 Stone Backfill	Ten dollars and Eighty cents	10.80
4" Sidewalk Concrete (4000 P.S.I.)	Fourteen dollars and Four cents	14.04
Pavement Removal	Four dollars and Fifty Six cents	4.56
Common Excavation	Lump Sum	\$25,842.00
Waste Excavation	Five dollars and Eighty Eight cents	5.88
Tree Removal 7" - 12" Dia.	One Hundred and Ninety Two dollars	192.00
Tree Removal 12" - 24" Dia.	Two Hundred and Eighty Eight dollars	288.00
Seeding & 2" Mulch	Eighty Four cents	.84
8" Concrete Pavement (Reinforced)	Twenty dollars and Sixteen cents	20.16
Rails Replacement Type "D"	Thirty Four dollars and Fifty cents	34.50
Railroad Crossing Type "A"	Five Hundred Thirty Four dollars	534.00
Connection of 33" to Brick Sewer	Lump Sum	6,600.00
Pumping Station Removal	Lump Sum	3,720.00
Adjust existing structures to grade using existing casting	Ninety dollars	90.00
6" X 20" Integral Conc. Curb	Eight dollars and Sixty Four cents	8.64
6" Integral Curb	Two dollars and Fifty Two cents	2.52
Billboard Removal and Replacement in Like Manner	Eight Hundred and Forty dollars	840.00
Yard Drain	One Hundred and Eighty dollars	180.00
Remove existing structures Sta. 0+00 to Sta. 9+70 including Railroad	Lump Sum	57,200.00
Materials paid by P.O. to L.B. Foster Co.	Lump Sum	31,222.30
9" Plain Concrete Pavement	Fourteen dollars and Eighty Five cents	14.85
Waste Oil Mat	Thirty Eight cents	.38
Borrow	Five dollars and Twenty Two cents	5.22

The said party of the first part expressly agrees to make the improvements herein specified in strict accordance with the provisions of STREET Improvement Resolution No. 5689-1975 and in accordance with the plans, profiles and specifications for the improvement on file in the office of the Department of Public Works of said city. The resolutions, profiles, plans, specifications and bids for

Mammoth Type 11-00	Four Hundred and Twenty dollars	420.00
Inlet Type I	Eight dollars and Fifty Two cents	8.52
Special Backfill	Ten dollars and Eighty cents	10.80
#73 Stone Backfill	Fourteen dollars and Four cents	14.04
4" Sidewalk Concrete (4000 P.S.I.)	Four dollars and Fifty Six cents	4.56
Pavement Removal	Lump Sum	\$25,842.00
Common Excavation	Five dollars and Eighty Eight cents	5.88
Waste Excavation	One Hundred and Ninety Two dollars	192.00
Tree Removal 7" - 12" Dia.	Two Hundred and Eighty Eight dollars	288.00
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Co.	Fourteen dollars and Eighty Five cents	14.85
9" Plain Concrete Pavement	Thirty Eight cents	.38
Waste Oil Mat	Five dollars and Twenty Two cents	5.22
Borrow		

The said party of the first part expressly agrees to make the improvements herein specified in strict accordance with the provisions of STREET Improvement Resolution No. 5689-1975 and in accordance with the plans, profiles and specifications for the improvement on file in the office of the Department of Public Works of said city. The resolutions, profiles, plans, specifications and bids for work herein specified are hereby made a part of this contract as fully and effectually as if herein set out in full.

The said party of the first part further agrees to do and perform all of said work to the entire satisfaction of the Board of Public Works and to complete the same by Sept. 1, 1975 days after the date of Execution of this contract. To each of the conditions and stipulations of this contract the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, We, the foregoing named parties hereunto set our hands this

day of JUN 30 1975 19

John Dehner, Inc.

BY: John Dehner

ITS: PRESIDENT

Contractor, party of the first part.

This contract approved by us this 10th day of July 19 75

BOARD OF PUBLIC WORKS,
Party of the second part.

John A. Foster Mayor

LIABILITY BOND

KNOW ALL MEN BY THESE PRESENTS, That we John Dehner, Inc.

as principal and United States Fidelity and Guaranty Company

----- YASTE, ZENT, & RYE, INC. -----

as surety, are held and firmly bound to the City of Fort Wayne, Indiana, in the sum of Three Hundred
ninety seven thousand six hundred sixty five dollars and ninety nine cents \$ 397,665.99)
for the payment of which well and truly to be made we jointly and severally bind ourselves, our heirs,
executors, administrators and assigns firmly by these presents.

The condition of the above obligations are such, that if the above named party of the first part shall
faithfully comply with the foregoing contract made and entered into the -----

day of -----, with the City of Fort Wayne, Indiana, and shall faithfully
fulfill all the conditions and stipulations therein contained, except the warranty and guaranty of the
sewer as to the workmanship, material and conditions for the period of Three (3) years, according to
the true intent and meaning thereof in all respects, then this obligation to be void, otherwise to be and
remain in full force and virtue in law and in the event the said City shall extend the time for the com-
pletion of said work, such extension shall not in any way release the sureties on this bond.

Witness our hands and seals this ----- day of JUN 30 1975 19 -----

YASTE, ZENT & RYE, INC.
Authorized Agents

Arthur C. Zisch

John Dehner, Inc. (SEAL)

BY: John Dehner PRESIDENT (SEAL)

United States Fidelity
And Guaranty Company (SEAL)

YASTE, ZENT, & RYE, INC. (SEAL)

Lawrence J. Huber 933 (SEAL)

Attorney-in-fact

Approved this 16th day of July 19 75

Carl E. O'Neil

Beth Ann Nault

Board of Public Works.

APPROVED AS TO FORM AND LEGALITY

[Signature]
CITY ATTORNEY

GUARANTY BOND

KNOW ALL MEN BY THESE PRESENTS, That we -----

JOHN DEHNER, INC.

Contractors

as principal and United States Fidelity and Guaranty Company -----

YASTE, ZENT, & RYE, INC., -----

as surety, are held and firmly bound to the City of Fort Wayne, Indiana, in the sum of Three hundred ninety seven thousand, six hundred sixty five dollars and ninety ⁹⁹/₁₀₀ ^{nine cents})

for the payment of which well and truly to be made we jointly and severally bind ourselves, our heirs, executors, administrators, and assigns firmly by these presents.

The conditions of the above obligations are, that whereas the said -----

did on the ----- day of ----- enter into a contract with the City of Fort Wayne, Indiana, by and through its Board of Public Works, for the construction of a sewer in and along -----

according to certain plans and specifications, and also warranting and guaranteeing the work, material and conditions of the sewer as provided in the aforesaid contract, plans and specifications.

Now, if the said -----

shall faithfully perform and fulfill all the requirements of said warranty and guaranty, and make all repairs required under said guarantee, and in the manner provided for, then this bond to be null and void otherwise to be in full force and effect.

WITNESS our hands and seals this ----- day of JUN 30 1975

YASTE, ZENT & RYE, INC.

Authorized Agents

Arthur C. Zwick

John Dehner, Inc.

BY: *John Dehner* PRESIDENT (SEAL)

United States Fidelity and Guaranty Company (SEAL)

YASTE, ZENT & RYE, INC.

Approved this 10th day of

Carl E. O'Neal

Betty Ann Dault

Board of Public Works.

DEPARTMENT OF PUBLIC WORKS
OFFICE OF THE BOARD
CITY HALL

To Whom It May Concern: Fort Wayne, Ind., 19

The time in which to complete the within contract is hereby extended by the Board of Public Works of the City of Fort Wayne, Indiana, until

Board of Public Works.

DEPARTMENT OF PUBLIC WORKS
OFFICE OF THE BOARD
CITY HALL

To Whom It May Concern: Fort Wayne, Ind., 19

The time in which to complete the within contract is hereby extended by the Board of Public Works of the City of Fort Wayne, Indiana, until

Board of Public Works.

No. 19
CONTRACT AND BOND
of

for

Amount of Bond

Approved: Dollars

Board of Public Works.

Recorded in Contract Record Book No.

Page Recorded in Imp. Res.

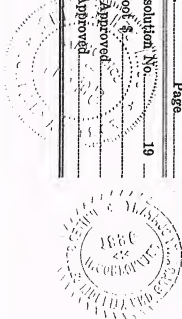
Record Book No. Page

Improvement Resolution No. 19

Cost per lineal foot

Assessment Roll Approved

Final Estimate Approved



GENERAL POWER OF ATTORNEY

No. 83680

Know all Men by these Presents:

That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Lane I. Grile

of the City of Fort Wayne, State of Indiana, its true and lawful attorney in and for the State of Indiana

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively sign and acknowledge any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said

Lane I. Grile

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 19th day of April, A. D. 19 73, UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed)

By James A. Mappus

Vice-President

(SEAL)

(Signed)

John H. Aitken

Assistant Secretary

STATE OF MARYLAND,
BALTIMORE CITY,

On this 19th day of April, A. D. 19 73

James A. Mappus
COMPANY and

John H. Aitken

Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland; that they, the said James A. Mappus and John H. Aitken, were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first day in July, A. D. 19 74

(SEAL)

(Signed)

Herbert J. Aull

Notary Public

STATE OF MARYLAND,
BALTIMORE CITY,

I, Robert H. Bouse

Clerk of Record, and has a seal, do hereby certify that

Clerk of the Superior Court of Baltimore City, which Court is a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 19th day of April, A. D. 19 73

(SEAL)

(Signed)

Robert H. Bouse

Clerk of the Superior Court of Baltimore City

COPY OF RESOLUTION

That Whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland; and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it Resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performances of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also, in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, **Richard Calder**, an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney given by said Company to

Lane I. Grile

of **Fort Wayne, Indiana**, authorizing and empowering **him** to sign bonds as therein set forth, which power of attorney has never been revoked and is still in full force and effect.

And I do further certify that said Power of Attorney was given in pursuance of a resolution adopted at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company in the City of Baltimore, on the 11th day of July, 1910, at which meeting a quorum of the Board of Directors was present, and that the foregoing is a true and correct copy of said resolution, and the whole thereof as recorded in the minutes of said meeting.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on

(Date) **June 30, 1975**

[Signature]

UNITED STATES FIDELITY AND GUARANTY COMPANY
Assistant Secretary
PROVIDENCE, RHODE ISLAND

TIME FOR COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed".

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the Owner, the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; Provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- (c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article:
Provided, further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the causes of the delay and notify the Contractor within a reasonable time of its decision in the matter.

LIABILITY CLAUSES

1. It is hereby mutually agreed, by and between the Contractor and Owner, that Contractor shall proceed with the work embraced by this contract upon notice from the owner to proceed. Owner agrees to hold Contractor harmless from any liability whatsoever arising from any claim, asserted by any owner of railroad right of way necessary to enter for the performance of this contract, challenging the right of Contractor to enter upon said right of way or to perform this contract within said right of way.
2. It is hereby mutually agreed, by and between the Contractor and Owner, that Contractor shall not be liable and that Owner shall hold Contractor harmless from any judgment obtained as a result of any defect in the design of the grade crossing to be constructed herein.

DIGEST SHEET

TITLE OF ORDINANCE Special Ordinance

✓
S-75-08-17

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE Covers contract with John Dehner, Inc. in amount of
\$397,665.99 for Resolution 5689-1975, Sherman Boulevard Underpass Modification.

SEE "PRIOR APPROVAL" AND CONTRACT ATTACHED

EFFECT OF PASSAGE Has Prior Approval

EFFECT OF NON-PASSAGE Has Prior Approval

MONEY INVOLVED (Direct Costs, Expenditures, Savings) \$397,665.99

ASSIGNED TO COMMITTEE

Public Works Bd.